

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SHELBY STEWART, <i>et al.</i> ,	§
	§
Plaintiffs,	§
	§
v.	§ CIVIL ACTION NO. H-07-4021
	§
CITY OF HOUSTON and	§
CITY OF HOUSTON CHIEF OF	§
POLICE HAROLD HURTT,	§
	§
Defendants.	§

ORDER

The defendants moved for an order assessing additional costs and attorneys' fees against the plaintiffs. The request arises out of the plaintiffs' failure to pay the costs associated with deposing the defendants' expert witnesses. (Docket Entry No. 57). The plaintiffs have not responded to this motion.

The plaintiffs deposed two of the defendants' expert witnesses in April 2009. Before the depositions, the defendants' counsel sent a letter to the plaintiffs' counsel asking for confirmation that the plaintiffs would pay the experts' reasonable fees to prepare for, travel to and from, and attend the depositions under Rule 26(b)(4)(C)(i) of the Federal Rules of Civil Procedure. (Docket Entry No. 57, Ex. A-1). The defendants' counsel followed up by e-mail. The plaintiffs' counsel responded that the plaintiffs would pay the fees. (*Id.*, Ex. A-2). Invoices attached to the defendants' motions state that one expert's fees were \$4,800.00 and the other expert's were \$1,469.00.¹ (*Id.*, Exs. A-3, A-4).

¹ The invoice reflects a total of \$1,544.00 for the second expert. (Docket Entry No. 57, Ex. A-4). However, the letter seeking reimbursement from the plaintiffs requested only \$1,469.00, reflecting a one-hour deduction at the expert's \$75.00 hourly rate. (*Id.*, Ex. A-5). In their motion, the defendants seek only \$1,469.00 for that expert. (Docket Entry No. 57, Proposed Order).

In May 2009, the defendants' counsel requested reimbursement for both invoices by letter. (*Id.*, Ex. A-5). In June 2009, the defendants' counsel sent another letter requesting reimbursement by 5:00 p.m. on June 29, 2009. (*Id.*, Ex. A-6). No payment was received. (*Id.*, Ex. A, Affidavit of Clay T. Grover ¶ 8). On September 23, 2009, the defendants filed a motion seeking payment of the experts' fees and \$500 in attorneys' fees for the cost of preparing the motion. (Docket Entry No. 57).

Rule 26(b)(4)(C)(i) provides that in the absence of "manifest injustice," the court must require the party seeking discovery to "pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (B)." Rule 26(b)(4)(A) provides that a party may depose a person identified as a testifying expert. Fees awarded under Rule 26(b)(4)(C)(i) include time spent in preparing for the deposition, in traveling to the deposition, and in the deposition. *See Rogers v. Penland*, 232 F.R.D. 581, 582 (E.D. Tex. 2005); *see also Abundiz v. Explorer Pipeline Co.*, Nos. Civ. 300CV2029-H, Civ. 303CV0508-H, Civ. 303CV0787-H, 2004 WL 1161402, at *3–4 (N.D. Tex. May 24, 2004) (holding that Rule 24(b)(4)(C) authorizes compensation for time spent preparing for a deposition), *report and recommendation adopted* by 2004 WL 1373216 (N.D. Tex. June 18, 2004); 8A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE & PROCEDURE § 2034 (3d ed. 2010) (observing that some courts have awarded fees for preparation, travel, and the deposition).

The plaintiffs deposed the defendants' experts in April 2009. The plaintiffs have not responded to the motion to show manifest injustice, nor is any evident from the motion. Payment of the experts' fees is appropriate under Rule 26(b)(4)(C)(i). Reasonable attorneys' fees for the cost of preparing the motion are also warranted.

The amount due for the second expert will be reduced by \$60.00, however. The invoice submitted for that expert contains a double-billed period. The invoice bills two hours for a conference on April 7, 2009 from 5:15 p.m. to 7:15 p.m. but also bills eight-tenths of an hour for travel time from 6:30 p.m. to 7:20 p.m. on the same day. The \$60 billed for the travel time will be deducted from the \$1469.00 requested.² The plaintiffs will reimburse the defendants \$1,409.00 for the second expert's fees.

This court orders the plaintiffs to reimburse the defendants \$6,209.00 in expert fees and \$500.00 in attorneys' fees for filing the motion. The plaintiffs are ordered to remit payment by April 30, 2010.

SIGNED on April 14, 2010, at Houston, Texas.



Lee H. Rosenthal
United States District Judge

² As discussed in footnote one, the defendants sought \$75 less than the total listed in the invoice. Although that deduction may account for the double-billed period, the defendants do not explain the deduction. In the absence of an explanation, the court will deduct the time from the amount sought.